

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|  |   |                     |
|--|---|---------------------|
| In the Matter of                           | ) |                     |
|  | ) |                     |
| Federal-State Joint Board on Universal     | ) |                     |
| Service                                    | ) | CC Docket No. 96-45 |
|  | ) |                     |
| Petition for Agreement in Redefining the   | ) |                     |
| Service Area Requirement for Certain Rural | ) |                     |
| Telephone Company Study Areas in the State | ) |                     |
| of North Dakota pursuant to 47 C.F.R.      | ) |                     |
| § 54.207(c)                                | ) |                     |

**PETITION FOR AGREEMENT WITH REDEFINITION OF SERVICE AREA  
REQUIREMENT FOR CERTAIN RURAL TELEPHONE COMPANY STUDY AREAS  
IN THE STATE OF NORTH DAKOTA**

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June 3, 2004

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## **SUMMARY**

This petition seeks the Commission's concurrence, pursuant to section 54.207(c) of the Rules, with the redefinition of the service area requirement approved by the North Dakota Public Service Commission ("NDPSC") in connection with its grant of eligible telecommunications carrier ("ETC") status to the Petitioners herein: Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 of North Dakota Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5 – Kidder Limited Partnership; and Bismarck MSA Limited Partnership (collectively, "Petitioners").

In the NDPSC proceeding, Petitioners each sought ETC designation throughout its respective commercial mobile radio services ("CMRS") licensed service area in North Dakota. Each Petitioner requested the NDPSC to redefine the service area requirement where it could not serve the entire study area of the incumbent rural telephone company, consistent with 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b). The incumbent rural telephone companies intervened and initially opposed the applications, but later withdrew and stipulated that Petitioners' respective ETC applications should be granted, including their requests for redefinition of the service area requirement.

The NDPSC granted Petitioners' requests for ETC designation and for redefinition of the service area requirement, concluding that Petitioners should be designated as ETCs throughout their respective licensed areas. The NDPSC's decision was made subsequent to, and specifically considered, the Commission's *Virginia Cellular* decision. The NDPSC found that the public interest would be served by having Petitioners designated as additional ETCs in all the rural telephone company service areas. To effectuate the designations in the rural telephone company

study areas that Petitioners did not serve in their entirety, the NDPSC determined that the service area requirement for these companies should be redefined.

The NDPSC's conclusion to redefine the service area requirement in these ETC designations was consistent with federal law, the Commission's regulations and decisions, and the Joint Board's recommendations. The redefinition is also consistent with the stipulations and agreements of the incumbent rural telephone companies in North Dakota. Redefinition of the service area requirement for these rural telephone company areas is necessary to further the universal service goals of the Telecommunications Act of 1996.

Only the Commission's agreement with the NDPSC's proposed redefinition of the service area requirement, pursuant to section 54.207(c) of the Rules, is required for Petitioners to begin providing universal service to these North Dakota rural consumers as ETCs. Therefore, Petitioners respectfully request that the Commission grant its consent to the NDPSC's proposed redefinition.

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| of North Dakota pursuant to 47 C.F.R.      | ) |                     |
| § 54.207(c)                                | ) |                     |

This petition seeks the Commission's concurrence, pursuant to section 54.207(c) of the Rules, with redefinition of the study area requirement<sup>1</sup> approved by the North Dakota Public Service Commission ("NDPSC") in connection with its grant of eligible telecommunications carrier ("ETC") status to the Petitioners herein.<sup>2</sup> As demonstrated in this petition, the NDPSC's redefinition of the service area requirement in these ETC designations was consistent with federal law, the Commission's regulations and decisions, and the Joint Board's recommendations. The public interest will be served by the Commission's prompt concurrence in it.

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<sup>1</sup> All ETCs receive support for a specific "service area" and, for incumbent local exchange carriers ("LECs"), the service area is the study area. 47 C.F.R. § 54.207(a)-(b). The Rules provide for the redefinition of this service area requirement in cases of competitive ETC designations. 47 C.F.R. § 54.207(c). Such redefinition does not change the incumbent LEC's study area.

<sup>2</sup> The Petitioners herein are: Northwest Dakota Cellular of North Dakota Limited Partnership; North Central RSA 2 of North Dakota Limited Partnership; North Dakota RSA No. 3 of North Dakota Limited Partnership; Badlands Cellular of North Dakota Limited Partnership; North Dakota 5 – Kidder Limited Partnership; and Bismarck MSA Limited Partnership (collectively, "Petitioners").

## **I. BACKGROUND**

Section 254 of the Act directs the Commission and the states to establish universal service support mechanisms to provide affordable and quality telecommunications services to all Americans. 47 U.S.C. §254(b). Section 214(e) of the Act grants general authority to state commissions to designate carriers as an "eligible telecommunications carrier" ("ETC"). 47 U.S.C. §214(e). Among the requirements are that the carrier (1) is a common carrier; (2) provide the supported services; and (3) meet all service and advertising obligations of an ETC. 47 U.S.C. § 214(e)(1)-(2); 47 C.F.R. § 54.101. For an area served by a rural telephone company, the carrier must also show that its designation as an additional ETC is in the public interest. Only ETCs may receive support. 47 U.S.C. § 254(e).

ETC applicants' service areas, for support purposes, are defined by the state commission in the designation process. 47 U.S.C. §214(e)(5). There are no restrictions on the states' definition of service areas in non-rural telephone company territory but, in areas served by a rural telephone company, the service area is defined as the rural telephone company's "study area" unless and until the Commission and the state commission both agree to redefine that requirement. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8872 n.434 (1997) ("*Universal Service Order*"). The Commission has long recognized that requiring a new telecommunications provider, especially a wireless provider, to conform its designated service area to the study area of the incumbent local exchange carrier ("ILEC") may give the ILEC an unfair advantage. *Id.*, at 8881-83.

The Commission has promulgated 47 C.F.R. §54.207 to avoid such anti-competitive results. That Rule permits state commissions to designate ETCs for a service area that differs from the incumbent rural telephone company's study area, and provides that such designations

will take effect subject to agreement by the Commission. In making and agreeing to such designations, the Commission and the state commission each must give full consideration to the Joint Board's recommendations and explain their rationale. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1582 (2004) ("*Virginia Cellular*"). There are three factors recommended by the Joint Board that are to be considered by the state commission and the Commission when determining the appropriateness of redefining the service area requirement for an ETC in a rural telephone company's study area. As discussed in more detail below, the NDPSC considered these factors and found that the proposed redefinition satisfied them.

On October 15, 2003, Petitioners each filed separate applications with the NDPSC for designation as an ETC and for redefinition of the service area requirement where necessary. The applications were accompanied by affidavits attesting to the satisfaction of the ETC requirements under 47 U.S.C. § 214(e) and the benefit to rural consumers of designating Petitioners as an additional ETC in the areas served by the rural telephone companies. *Order* at 2.

The intervening incumbent rural carriers initially opposed only the requested redefinition of the service area requirement. Later, however, they agreed with Petitioners that redefinition of the service area requirement was consistent with federal law and the public interest. (*See Stipulations* attached as Exhibit B.) The NDPSC then proceeded to an informal hearing on the applications and subsequently issued the *Order* (attached hereto as Exhibit A) granting Petitioners' requests for ETC designation and for redefinition of the service area requirement. The NDPSC found that each Petitioner was qualified to be designated as an ETC and that the public interest would thereby be served. To effectuate the designations in the rural telephone

company study areas that Petitioners did not serve in their entirety, the NDPSC determined that the service area requirement for these companies should be redefined on an exchange basis and, where necessary, a partial exchange basis. *Order* at 13. In making its determination, the NDPSC specifically considered the Commission's recent *Virginia Cellular* decision. *See, e.g., Order* at 10-11.

As discussed in more detail below, the NDPSC concluded that Petitioners were each qualified under the Act for designation as an ETC in the non-rural exchanges and rural telephone company service areas that they served in their entirety. *Order* at 13-14. For rural telephone company service areas that Petitioners did not serve in their entirety, the NDPSC granted conditional ETC designation, subject to the Commission's consent to redefinition of the service area requirement. *Id.* Table 7 to the *Order*, reproduced below, sets forth the areas in which Petitioners were designated as ETCs contingent on the Commission's approval with the proposed redefinition:

TABLE 7

| <b>Applicant Name</b>     | <b>Service areas in which conditional designation was obtained</b>  |
|---------------------------|---|
| Northwest Dakota Cellular | all exchanges and partial exchanges of BEK Communications Cooperative, Nemont Telephone Cooperative, Inc., Midstate Telephone Company, Reservation Telephone Cooperative, SRT Communications, Inc., Missouri Valley Communications and West River Telecommunications Cooperative within the geographic boundaries of its FCC licensed cellular service area in North Dakota (Rural Service Area 1 (RSA 1))                      |
| North Central RSA 2       | all exchanges and partial exchanges of SRT Communications, Inc., Turtle Mountain Communications, United Telephone Mutual Aid Corporation, North Dakota Telephone Company, York Telephone Company (now know as Midstate Communications Inc.), Polar Telecommunications, Inc., and Polar Communications Mutual Aid Corporation within the geographic boundaries of its FCC licensed cellular service area in North Dakota (RSA 2) |



| <b>Applicant Name</b>  | <b>Service areas in which conditional designation was obtained</b>   |
|------------------------|--|
| North Dakota RSA No. 3 | all exchanges and partial exchanges of Dakota Central Telecom I, Inc., Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Griggs County Telephone Company, Inter-Community Telephone Company LLC, Moore and Liberty Telephone Company, North Dakota Telephone Company, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., and United Telephone Mutual Aid Corporation within the geographic boundaries of its FCC licensed cellular service area in North Dakota (RSA 3) |
| Badlands Cellular      | all exchanges and partial exchanges of Midstate Telephone Company, West River Telecommunications Cooperative, Reservation Telephone Cooperative, Mid-Rivers Telephone Cooperative, Inc., and York Telephone Company (now known as Midstate Communications Inc.) within the geographic boundaries of its FCC licensed cellular service area in North Dakota (RSA 4)   |
| North Dakota 5         | All exchanges and partial exchanges of BEK Communications Cooperative, Dickey Rural Telephone Cooperative, Dakota Central Telecommunications Cooperative, Griggs County Telephone Company, North Dakota Telephone Company, West River Telecommunications Cooperative, SRT Communications, Inc., Dakota Central Telecom I, Inc., and Dickey Rural Communications, Inc. within the geographic boundaries of its FCC licensed cellular service area in North Dakota (RSA 5)   |
| Bismarck MSA           | All exchanges and partial exchanges of BEK Communications Cooperative and West River Telecommunications Cooperative within the geographic boundaries of its FCC licensed cellular service area in North Dakota (Bismarck Metropolitan Statistical Area (Bismarck MSA))   |

## **II. DISCUSSION**

### **A. The NDPSC's Redefinition of the Service Area Requirement for Certain Rural Telephone Company Areas is Consistent with Federal Universal Service Policy.**

In passing the 1996 amendments to the Act, Congress declared its intent:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added). Consistent with its pro-competitive goals, the Act specifically contemplates the designation of multiple ETCs, including in rural telephone companies' territories, consistent with the public interest. 47 U.S.C. § 214(e)(2). The Commission has long recognized that requiring a new telecommunications provider, especially a wireless provider, to conform its designated service area to the study area of the ILEC may give the ILEC an unfair advantage. *Universal Service Order*, 12 FCC Rcd at 8881-83. That is particularly demonstrated in this instance because substantial portions of the ILEC's study areas lie outside the Petitioners' licensed RSAs. Redefinition is in the public interest because it will enable Petitioners to bring new services and new technologies to customers of North Dakota's rural telephone companies, who now have no meaningful choice of universal service providers.

The Commission has previously determined that redefinition of the service area requirement facilitates local competition by enabling new providers to serve based on licensed areas. *Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas of the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, 15 FCC Rcd 9921, 9927-28 (Com. Car. Bur. 1999). The FCC noted: "We find that our concurrence with rural LEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition." *Id.* at 9927. The FCC concluded that the Washington Commission's "effort to facilitate local competition justifies [the FCC's] concurrence with the proposed service area designation." *Id.* at 9928. This likewise illustrates the Commission's deference to the unique qualifications of state commissions to best determine whether requests for redefinition should be granted. *See Highland Cellular, Inc. Petition for*

*Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 6422, ¶ 2 (2004).

The proposed redefinition will foster competition in North Dakota. Redefining the service area requirement for purposes of defining the ETC service areas will enable Petitioners to offer competitive universal services to the customers of these rural telephone companies. This effort at facilitating competition furthers the goals of the Act and this Commission. *See Virginia Cellular*, 19 FCC Rcd at 1576. Therefore, the Commission should agree to the redefinition of the service areas consistent with the NDPSC's determinations in this proceeding.

**B. The Requested Redefinition Satisfies the Joint Board's Factors Under Section 214(e)(5) of the Act.**

As noted above, the Commission has identified three factors initially recommended by the Joint Board which should be considered when determining the appropriateness of redefining a rural telephone company's service area. *See, e.g., Highland Cellular*, 19 FCC Rcd at ¶¶ 38-41 (applying Joint Board's recommended factors). As the NDPSC concluded, redefinition is consistent with these factors in this case. In fact, the incumbent rural telephone companies in North Dakota executed the *Stipulations* evidencing their agreement to the redefinition.

**1. Agreeing to this redefinition will not result in the effects of creamskimming.**

The first factor is the risk the applicant is selectively seeking designation in the low cost, high support areas in the rural ILEC's study area, a process known as "creamskimming." The Commission has noted that, if a competitor were required to serve a rural telephone company's entire study area, the risk of "creamskimming" would be eliminated because a competitive ETC would be prevented from selectively targeting service only to the lowest cost exchanges of the rural ILEC's study area. *Universal Service Order*, 12 FCC Rcd at 8881-82. As the Joint Board explained:

We note that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "cream skimming" by potential competitors. Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.

*Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 179-80 (1996) ("*Joint Board Recommendations*").

In granting the conditional ETC designations, the NDPSC thoroughly considered the Joint Board's recommendations described above, as well as the Commission's recent *Virginia Cellular* decision applying those factors, and found that it was appropriate to redefine the service area requirement. First, the NDPSC held a hearing on December 17, 2003, in response to its published Notice of Opportunity for Hearing and Notice of Informal Hearing. The affected rural ILECs appeared at the hearing, and had a full opportunity to introduce factual evidence on the Petitioners' qualifications for ETC designation and the redefinition of the service areas. Ultimately, the affected rural ILECs entered into a various Service Area Stipulations with Petitioners setting forth an agreement to resolve the objections of the rural ILECs. *Order* at 2. Based on the evidence adduced in its proceeding, the NDPSC ultimately found that there was "no evidence in this proceeding of rural cream skimming effects in redefining the service areas requested by [Petitioners]." *Order* at 10.. This finding was based in part on the rural telephone companies' ability to minimize the possibility of cream skimming by disaggregating and targeting their own support. *Id.* The NDPSC also specifically considered the Commission's *Virginia Cellular* decision, and found compelling the Commission's conclusion that redefinition is appropriate when the ETC is limited to providing facilities-based service only where it is licensed by the Commission, and the ETC commits to providing universal service throughout its licensed territory. *Id.* (citing *Virginia Cellular*, 19 FCC Rcd at 1582-83).

**2. Agreeing to this redefinition will not affect the unique status of rural telephone companies.**

The second factor to consider is the regulatory status enjoyed by rural telephone companies under the Act. The Commission has determined that initially establishing the rural telephone company's study area as the service area was appropriate, at least temporarily, in recognition of the different treatment afforded to smaller rural telephone companies which are exempt from certain of the Act's requirements. *Universal Service Order*, 12 FCC Rcd 8881-82.

In making its recommendation, the Joint Board had reasoned:

For example, rural telephone companies are initially exempt from the interconnection, unbundling, and resale requirements of 47 U.S.C. § 251(c). The 1996 Act continues this exemption until the relevant state commission finds, inter alia, that a request of a rural telephone company for interconnection, unbundling, or resale would not be unduly economically burdensome, would be technically feasible, and would be consistent with section 254. Moreover, while a state commission must designate other eligible carriers for non-rural areas, states may designate additional eligible carriers for areas served by a rural telephone company only upon a specific finding that such a designation is in the public interest.

*Joint Board Recommendations*, 12 FCC Rcd at 180.

The NDPSC determined that the second factor – the unique regulatory status of rural carriers – was not a concern. *Order* at 10. Petitioners submitted evidence that their designation as ETCs would not affect any rural telephone company exemptions under the Act, and also that the public interest standard applied as a safeguard to protect the rural carriers. *Id.* In addition, the NDPSC relied on the Commission's conclusion in *Virginia Cellular* that:

(1) the high-cost universal service mechanisms support all lines served by ETCs in rural areas; (2) receipt of high-cost support by [the applicant] will not affect the total amount of high-cost support that the incumbent rural telephone company receives; (3) to the extent that [the applicant] or any future competitive ETC captures incumbent rural telephone company lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve; and (4) redefining the service areas of the affected rural telephone

companies will not change the amount of universal service support that is available to these incumbents.

*Id.* (citing *Virginia Cellular*, 19 FCC Rcd at 1583). Accordingly, the NDPSC found "little likelihood of harm to the rural companies. No evidence in this proceeding regarding the regulatory status enjoyed by rural telephone companies under the Act leads us to conclude that [Petitioners'] request for redefined study areas should not be granted." *Id.*

Nothing in the service area redefinition process for an ETC applicant affects the rural carrier's statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c). *Id.* Redefining the rural telephone company service area requirement on this basis will not compromise or impair the unique treatment of these companies as rural telephone companies under Section 251(f) of the Act. The companies will still retain the statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c) even if their service areas are redefined for purposes of ETC designations.

Additionally, the redefinition process does not affect the way in which a rural ETC calculates its embedded costs or the amount of per-line support it receives. "Under the Commission's rules, receipt of high-cost support by [a competitive ETC] will not affect the total amount of high-cost support that the incumbent rural telephone company receives." *Virginia Cellular*, 19 FCC Rcd at 1583. Rather, the redefinition process only modifies the service area requirement for an incumbent's service area for purposes of designating a competitive ETC. Moreover, redefinition will not affect the total amount of high-cost support that an incumbent rural telephone company will receive. *Id.* Thus, the incumbent carriers will retain their unique regulatory status as rural telephone companies under the Act consistent with the Joint Board's recommendations.

The Act's public interest factor for the designation of an additional ETC in the service areas of these rural telephone companies under 47 U.S.C. § 214(e)(2) also remains in place as a safeguard. The continued existence of the public interest standard has been noted by the Commission as a safeguard available to a state commission to support a redefinition request for service areas on a less-than-study area level. *Universal Service Order*, 12 FCC Rcd at 8882-83. This public interest factor remains as an effective check to prevent the designation of an additional competitive ETC who may seek to target only low cost areas or otherwise pose a detriment to the rural consumers of the incumbents. Thus, the North Dakota incumbent LECs retain their unique status and special treatment as rural telephone companies under the Act consistent with the Joint Board's recommendations if the service area standard for their study areas were redefined.

**3. Agreeing to this redefinition will not create any administrative burdens.**

The third and final factor to consider is whether any administrative burdens might result from the redefinition of the service area. A rural telephone company's universal service support payments are currently based on a rural company's embedded costs determined at the study area level. *Universal Service Order*, 12 FCC Rcd at 8881-81. The Joint Board initially expressed concern that rural telephone companies might have difficulty calculating costs on a less-than-study area level. The Joint Board stated:

Another reason to retain existing study areas is that it is consistent with our recommendation that the determination of the costs of providing universal service by a rural telephone company should be based, at least initially, on the Company's embedded costs. Rural telephone companies currently determine such costs at the study area level. We conclude, therefore, that it is reasonable to adopt the current study areas as the service areas for rural telephone companies rather than impose the administrative burden of requiring rural telephone companies to determine embedded costs on a basis other than study areas.

*Joint Board Recommendations*, 12 FCC Rcd at 180. In 2001, however, the Commission adopted the Rural Task Force's recommendation for disaggregation and targeting of support, which distributes support among lines based more closely on the cost of providing service.<sup>3</sup> The Commission found that disaggregation and targeting "achieves a reasonable balance between rural carriers' needs for flexibility and the Commission's goal of encouraging competitive entry."<sup>4</sup> The Commission found that "the provision of uniform support throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was intended."<sup>5</sup> To avoid a "one-size-fits-all" approach, the Commission allows rural telephone companies to select among three "paths" to disaggregation and targeting of their support.<sup>6</sup> As a result, rural telephone companies are now able to minimize competitors' ability to cream-skim by disaggregating and targeting their support to their highest-cost lines.

In the ETC context, the Commission also has stated a policy favoring redefinition in instances where a rural carrier's study area is large and/or non-contiguous. In response to issues raised by competitive ETCs and wireless carriers who might not be able to provide facilities-based service throughout a rural company's entire study area, the Commission has expressly urged state commissions to explore redefinition for purposes of ETC designations. *Universal*

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<sup>3</sup> *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11302 (2001).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 11302-03. *See also* 47 C.F.R. § 54.315.



*Service Order*, 12 FCC Rcd at 8881-82. More recently, the Commission has stated its policy of deferring to state commissions' "firsthand knowledge of the rural areas [in their states, which] uniquely qualifies [them] to examine [] redefinition proposal[s] and determine whether [they] should be approved." *See, e.g., Highland Cellular*, 19 FCC Rcd at ¶ 2. The Commission has also cautioned that requiring a new entrant to serve a non-contiguous service area as a prerequisite to ETC eligibility would impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service." *Universal Service Order*, 12 FCC Rcd at 8882-83.

The NDPSC concluded that redefinition was appropriate in this case. *Order* at 10-11. The NDPSC again relied on *Virginia Cellular*, finding that "redefining the rural telephone company service areas will not require the rural telephone companies to determine their costs on a basis other than the study area level. *Id.* at 11 (relying on *Virginia Cellular*, 19 FCC Rcd at 1583). It continued, "The redefinition does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules." *Id.* The NDPSC thus again concluded that "[n]o evidence in this proceeding regarding administrative burdens for rural telephone companies leads us to conclude that [Petitioners'] request for redefined study areas should be denied." *Id.*

### **III. CONCLUSION**

The NDPSC properly concluded that Petitioners should be designated as ETCs throughout every rural and non-rural telephone company area they serve. The NDPSC specifically found it to be in the public interest to designate Petitioners as additional ETCs in each of these areas. To effectuate the designations in the rural telephone company study areas that Petitioners did not serve in their entirety, the NDPSC concluded that the service area

requirement for these companies should be redefined. The North Dakota rural telephone companies do not oppose such redefinition as evidenced by the *Stipulations*.

The NDPSC's determination to redefine the service area requirement is consistent with federal law, the Commission's regulations and decisions, and the Joint Board's recommendations. Redefinition of the service area requirement for these rural telephone company areas is in fact necessary to further the universal service goals of the Act. Accordingly, Petitioners respectfully request that the Commission conclude, as did the NDPSC, that the service area requirement for Petitioners should be redefined so that Petitioners are designated for service areas coterminous with their licensed areas.

Respectfully submitted,

**NORTHWEST DAKOTA CELLULAR OF NORTH DAKOTA LIMITED PARTNERSHIP; NORTH CENTRAL RSA 2 OF NORTH DAKOTA LIMITED PARTNERSHIP; NORTH DAKOTA RSA No. 3 OF NORTH DAKOTA LIMITED PARTNERSHIP; BADLANDS CELLULAR OF NORTH DAKOTA LIMITED PARTNERSHIP; NORTH DAKOTA 5 – KIDDER LIMITED PARTNERSHIP; AND BISMARCK MSA LIMITED PARTNERSHIP**

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June 3, 2004

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## **EXHIBIT A**

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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| <b>Northwest Dakota Cellular of North<br/>Dakota Limited Partnership<br/>Designated Eligible Carrier<br/>Application</b> | <b>Case No. PU-1226-03-597</b> |
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| <b>North Central RSA 2 of North Dakota<br/>Limited Partnership<br/>Designated Eligible Carrier<br/>Application</b> | <b>Case No. PU-386-03-598</b> |
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| <b>North Dakota RSA No. 3 Limited<br/>Partnership<br/>Designated Eligible Carrier<br/>Application</b> | <b>Case No. PU-897-03-599</b> |
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| <b>Badlands Cellular of North Dakota<br/>Limited Partnership<br/>Designated Eligible Carrier<br/>Application</b> | <b>Case No. PU-1225-03-600</b> |
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| <b>North Dakota 5 – Kidder Limited<br/>Partnership<br/>Designated Eligible Carrier<br/>Application</b> | <b>Case No. PU-338-03-601</b> |
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| <b>Bismarck MSA Limited Partnership<br/>Designated Eligible Carrier<br/>Application</b> | <b>Case No. PU-494-03-602</b> |
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**ORDER**

**February 25, 2004**

**Preliminary Statement**

On October 15, 2003, applications for designation as an Eligible Telecommunications Carrier (ETC) were filed by: North Central RSA 2 of North Dakota Limited Partnership d/b/a Verizon Wireless (North Central RSA 2); Badlands Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless (Badlands Cellular); North Dakota RSA 3 Limited Partnership d/b/a Verizon Wireless (North Dakota RSA 3); Bismarck MSA Limited Partnership d/b/a Verizon Wireless (Bismarck MSA); North Dakota 5 - Kidder Limited Partnership d/b/a Verizon Wireless (North Dakota 5); and

Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless (Northwest Dakota Cellular); (collectively the Partnerships).

The Partnerships seek ETC designation for purposes of receiving federal universal service support for certain rural study areas and non-rural exchanges. For certain rural telephone company study areas not wholly within each applicant's FCC licensed service area, the Partnerships seek redefinition of those areas rural study areas. The Partnerships propose to provide universal services using its own facilities, or a combination of its own facilities and leased facilities, pursuant to 47 U.S.C. §214(e) and the FCC's regulations.

On October 22, 2003 the Commission issued a Notice of Opportunity for Hearing and Notice of Informal Hearing. An informal hearing was held on December 17, 2003. The notice stated that the Commission could determine the matter without a hearing.

The issues to be considered are:

1. The qualification of the applicant under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding.
2. The ETC universal service support area to be designated for the applicant.

On December 5, 2003, BEK Communications Cooperative, Consolidated Telcom, Dakota Central Telecom I, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey rural Telephone Cooperative, Inter-Community Telephone Company, LLC, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications, and United Telephone Mutual Aid Corporation; collectively the Rural Telephone Company Group (RTCG) filed a request to appear in the proceeding. The RTCG stated requested that, if the Commission does not deny the application for redefinition of study areas without a hearing, the RTCG requests a hearing.

On December 17, 2003 the applicants filed affidavits of Mark R. Smith, Director—Financial Reporting and Partnership Relations in support of the applications of the Partnerships.

On December 18, 2003 the Commission issued a Notice of Hearing.

On December 29, 2003 Inter-Community Telephone Company, L.L.C. filed a request to withdraw as an intervenor. The Commission granted the request on January 14, 2004.

On February 6, 2004, the parties filed a Joint Stipulation and six separate Service Area Stipulations setting forth an agreement to resolve objections of the RTCG.

On February 10, 2004, the Commission held an Informal Hearing.

### **ETC Designation**

The Telecommunications Act of 1996 provides financial support for universal services to common carriers that have been designated as eligible telecommunications carriers (ETCs) and that (1) offer the universal services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services and (2) advertise the universal services, advertise the availability of such services, and advertise the charges for such services, using media of general distribution.

The universal services designated for support by Federal universal service support mechanisms include voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers.

Both federal law and state law provide that the Commission designate a common carrier as an ETC. In areas served by a rural telephone company, the Commission must find that ETC designation is in the public interest.

The affidavits of Mark Smith state that:

- 1) Verizon Wireless is a common carrier, is licensed by the FCC to provide commercial mobile radio service (CMRS), and is currently providing CMRS throughout nearly all North Dakota.
- 2) The Partnerships will provide, throughout the areas in which they are seeking ETC designation, the required telecommunications services that are supported by universal service funding. The Partnerships will participate in Lifeline and Link-Up as required.
- 3) The Partnerships advertise the federally supported universal services throughout its requested designated service areas using different media of general distribution including newspaper, television, radio, and billboard advertising, and once designated, will advertise the availability of the supported services and charges using media of general distribution, in accordance with 47 C.F.R. § 54.201(d)(2).
- 4) The Partnerships will comply with all service area requirements, subject to the requested Commission's redefinition of the same.
- 5) Granting ETC designation to the Partnerships will serve the public interest by offering competitive services to North Dakota customers on a more even-handed basis than is the case today. The Partnerships' service offerings have a larger

local calling area as compared to the incumbent landline carriers, as well as benefits of mobility, and customers will be able to combine basic universal services with advanced data services if they so desire.

- 6) The Partnerships will use federal universal service support to provide universal services and extend its wireless networks in rural areas of North Dakota.
- 7) Designation of the Partnerships as ETCs will provide an incentive to the incumbent carrier to improve their existing networks in order to remain competitive, resulting in improved services and benefits to consumers including better service, lower rates, new technology, and provision of new and innovative services for consumers.

All areas for which the Partnerships request ETC designation, with the exception of the Qwest Corporation exchanges, are study areas of rural telephone companies.

The Partnerships agree that an applicant for ETC status is not required to be providing the required universal services to 100% of a service area before receiving designation as an ETC and that facilities to serve customers are required at some reasonable time after the customer agrees to the terms and conditions of the service provided. We continue to subscribe to this policy.

The Partnerships agree to provide quarterly reports describing the status of its E911 implementation in North Dakota.

### **Universal Service Support Areas**

The Commission must establish a geographic area (service area) for the purpose of determining universal service obligations and support mechanisms for the designated ETC. 47 U.S.C. § 214(e)(5).

47 U.S.C. § 214(e)(5) defines service area:

- (5) **SERVICE AREA DEFINED--** The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Table 1 lists, for purposes of federal universal service funding, the North Dakota study areas that have been established by the Federal Communications Commission and listed by the Universal Service Administrative Company (USAC) for incumbent local exchange companies (ILECs) serving customers in North Dakota:



**TABLE 1**

| <b>Study Area Name</b>                        | <b>Included Local Exchange Companies</b>   |
|---|--|
| Absaraka Cooperative Telephone Co., Inc.      | Absaraka Co-operative Telephone Company, Inc.  |
| BEK Communications Cooperative                | BEK Communications Cooperative   |
| Consolidated Telcom                           | Consolidated Telcom  |
| Dakota Central Telecommunications Cooperative | Dakota Central Telecommunications Cooperative<br>Dakota Central Telecom I, Inc.                      |
| Dickey Rural Telephone Cooperative            | Dickey Rural Communications, Inc.<br>Dickey Rural Telephone Cooperative<br>Dickey Rural Access, Inc. |
| Griggs County Telephone Company               | Griggs County Telephone Co   |
| Inter-Community Telephone Company L.L.C.      | Inter-Community Telephone Company, L.L.C.  |
| Midstate Communications Inc.                  | Midstate Communications Inc.   |
| Midstate Telephone Company                    | Midstate Telephone Company   |
| Moore & Liberty Telephone Company             | Moore and Liberty Telephone Company  |
| Nemont Telephone Cooperative, Inc.            | Nemont Telephone Cooperative, Inc.<br>Missouri Valley Communications, Inc                            |
| Noonan Farmers Telephone Company              | Noonan Farmers Telephone Company   |
| North Dakota Telephone Company                | North Dakota Telephone Company   |
| Northwest Communications Cooperative          | Northwest Communications Cooperative, a<br>Cooperative Association                                   |
| Polar Communications Mutual Aid Corporation   | Polar Communications Mutual Aid Corporation  |
| Polar Telecommunications, Inc.                | Polar Telcom, Inc.   |
| Qwest Corporation                             | Qwest Corporation  |
| Red River Rural Telephone Association         | Red River Rural Telephone Association<br>Red River Telecom, Inc.                                     |
| Reservation Telephone Cooperative             | Reservation Telephone Cooperative  |
| SRT Communications, Inc.                      | SRT Communications, Inc.   |
| United Telephone Mutual Aid Corporation       | United Telephone Mutual Aid Corporation<br>Turtle Mountain Communications, Inc.                      |
| West River Telecommunications Cooperative     | West River Telecommunications Cooperative  |
| Wolverton Telephone Company                   | Wolverton Telephone Company  |

Table 2 lists, for purposes of federal universal service funding, the Minnesota study areas that have been established by the Federal Communications Commission and listed by the USAC for ILECs serving customers in North Dakota:

**TABLE 2**

| <b>Study Area Name</b>                    | <b>Included Local Exchange Companies</b>               |
|---|--|
| Citizens Telecommunications Company of MN | Citizens Telecommunications Company of Minnesota, Inc. |
| Halstad Telephone Co.                     | Halstad Telephone Company                              |
| Loretel Systems, Inc                      | Loretel Systems, Inc.                                  |

Table 3 lists, for purposes of federal universal service funding, the South Dakota study areas that have been established by the Federal Communications Commission and listed by the USAC for ILECs serving customers in North Dakota:

**TABLE 3**

| <b>Study Area Name</b>                           | <b>Included Local Exchange Companies</b>                                    |
|--|---|
| James Valley Cooperative Telephone Company       | James Valley Cooperative Telephone Company                                  |
| Roberts County Telephone Cooperative Association | Roberts County Telephone Cooperative Association<br>RC Communications, Inc. |
| Venture Communications Cooperative               | Venture Communications, Inc.  |
| West River Cooperative Telephone Company         | West River Cooperative Telephone Company                                    |

Table 4 lists, for purposes of federal universal service funding, the Montana study areas that have been established by the Federal Communications Commission and listed by the USAC for ILECs serving customers in North Dakota:

**TABLE 4**

| <b>Study Area Name</b>                 | <b>Included Local Exchange Companies</b> |
|--|--|
| Mid-Rivers Telephone Cooperative, Inc. | Mid-Rivers Telephone Cooperative, Inc.   |

Table 5 lists the study areas for which the Partnerships request ETC designation and that do not require redefining:

**TABLE 5**

| <b>Applicant name</b>     | <b>Study area(s) requested for designation not requiring redefinition under 47 C.F.R. § 54.207(c)</b> |
|---------------------------|---|
| Northwest Dakota Cellular | Noonan Farmers Telephone Company<br>Northwest Communications Cooperative                              |
| North Dakota RSA 3        | Citizens Telecommunications Company of MN   |

|                   |   |
|-------------------|---|
|                   | Halstad Telephone Co<br>James Valley Cooperative Telephone Company<br>Roberts County Telephone Cooperative Association<br>Red River Rural Telephone Association<br>Venture Communications Cooperative<br>Wolverton Telephone Company<br>Qwest Corporation exchanges of Grafton, Minto, Northwood, Hatton, Mayville, Reynolds, Hillsboro, Jamestown, Valley City, Leonard, Kindred, Wahpeton, Gardner, Hickson and Thompson. |
| Badlands Cellular | Consolidated Telcom<br>West River Cooperative Telephone Company<br>Qwest Corporation exchanges of Belfield, Mandan, Dickinson, Sidney MT, Fairview MT, McIntosh SD, and Morristown SD   |
| North Dakota 5    | Qwest Corporation exchange of Jamestown   |
| Bismarck MSA      | Qwest Corporation exchanges of Bismarck and Mandan  |

The Partnerships have not requested that a designated service area include the Absaraka Cooperative Telephone Co., Inc. or Loretel Systems, Inc. study areas or the Qwest Corporation exchanges of Casselton, Comstock MN, Emerado, Fargo, Larimore, Manvel, Sabin MN, or West Fargo.

### **Redefinition of Service Areas**

The Partnerships have requested that the Commission redefine the service area requirement for certain rural telephone companies from a study area to an individual wire center or partial wire center to the extent that the Partnerships' wireless service area does not cover the entirety of a rural telephone company's study area. Table 6 lists the rural telephone company study areas for which the Partnerships request redefinition.

**TABLE 6**

| <b>Applicant name</b>     | <b>Requested redefined study areas under 47 C.F.R. § 54.207(c)</b>   |
|---------------------------|--|
| Northwest Dakota Cellular | BEK Communications Cooperative<br>Midstate Telephone Company<br>Nemont Telephone Cooperative, Inc.<br>Reservation Telephone Cooperative<br>SRT Communications, Inc.<br>West River Telecommunications Cooperative |
| North Central RSA 2       | SRT Communications, Inc.<br>United Telephone Mutual Aid Corporation  |

|                    |  |
|--------------------|--|
|                    | North Dakota Telephone Company<br>Midstate Communications Inc. (formerly known as York Telephone Company)<br>Polar Telecommunications, Inc.<br>Polar Communications Mutual Aid Corporation   |
| North Dakota RSA 3 | Dakota Central Telecommunications Cooperative<br>Dickey Rural Telephone Cooperative<br>Griggs County Telephone Company<br>Inter-Community Telephone Company LLC<br>Moore & Liberty Telephone Company<br>North Dakota Telephone Company<br>Polar Communications Mutual Aid Corporation<br>Polar Telecommunications, Inc.<br>United Telephone Mutual Aid Corporation |
| Badlands Cellular  | Mid-Rivers Telephone Cooperative, Inc.<br>Midstate Telephone Company<br>Midstate Communications Inc. (formerly known as York Telephone Company)<br>Reservation Telephone Cooperative<br>West River Telecommunications Cooperative  |
| North Dakota 5     | BEK Communications Cooperative<br>Dakota Central Telecommunications Cooperative<br>Dickey Rural Telephone Cooperative<br>Griggs County Telephone Company<br>North Dakota Telephone Company<br>West River Telecommunications Cooperative<br>SRT Communications, Inc.  |
| Bismarck MSA       | BEK Communications Cooperative<br>West River Telecommunications Cooperative  |

Table 7 lists the requested service areas within the requested redefined study areas for which the Partnerships request ETC designation.

**TABLE 7**

| <b>Applicant name</b>     | <b>Requested designated service areas within study areas requiring redefinition under 47 C.F.R. § 54.207(c)</b>                        |
|---------------------------|--|
| Northwest Dakota Cellular | all exchanges and partial exchanges of BEK Communications Cooperative, Nemont Telephone Cooperative, Inc., Midstate Telephone Company, |

|                     |  |
|---------------------|--|
|                     | Reservation Telephone Cooperative, SRT Communications, Inc., Missouri Valley Communications and West River Telecommunications Cooperative within the geographic boundaries of its Federal Communications Commission (FCC) licensed cellular service area in North Dakota (Rural Service Area 1 (RSA 1))  |
| North Central RSA 2 | all exchanges and partial exchanges of SRT Communications, Inc., Turtle Mountain Communications, United Telephone Mutual Aid Corporation, North Dakota Telephone Company, York Telephone Company (now know as Midstate Communications Inc.), Polar Telecommunications, Inc., and Polar Communications Mutual Aid Corporation within the geographic boundaries of its FCC licensed cellular service area in North Dakota (RSA 2)  |
| North Dakota RSA 3  | all exchanges and partial exchanges of Dakota Central Telecom I, Inc., Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Griggs County Telephone Company, Inter-Community Telephone Company LLC, Moore and Liberty Telephone Company, North Dakota Telephone Company, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., and United Telephone Mutual Aid Corporation within the geographic boundaries of its FCC licensed cellular service area in North Dakota (RSA 3) |
| Badlands Cellular   | all exchanges and partial exchanges of Midstate Telephone Company, West River Telecommunications Cooperative, Reservation Telephone Cooperative, Mid-Rivers Telephone Cooperative, Inc., and York Telephone Company (now known as Midstate Communications Inc.) within the geographic boundaries of its FCC licensed cellular service area in North Dakota (RSA 4)   |
| North Dakota 5      | all exchanges and partial exchanges of BEK Communications Cooperative, Dickey Rural Telephone Cooperative, Dakota Central Telecommunications Cooperative, Griggs County Telephone Company, North Dakota Telephone Company, West River Telecommunications Cooperative, SRT Communications, Inc., Dakota Central Telecom I, Inc., and Dickey Rural Communications, Inc. within the geographic boundaries of its FCC licensed cellular service area in North Dakota (RSA 5)   |
| Bismarck MSA        | All exchanges and partial exchanges of BEK Communications Cooperative and West River Telecommunications Cooperative within the geographic boundaries of its FCC licensed cellular service area in North Dakota (Bismarck Metropolitan Statistical Area (Bismarck MSA))   |

### *Factors for Consideration*

The Act and the FCC's regulations authorize the FCC and the Commission to act in concert to develop an alternative service area standard for areas served by rural telephone companies in accordance with 47 § C.F.R. 54.207(c)-(d). In defining a service area other than the study area we are required to take into account three factors as follows: (1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3)

recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.<sup>1</sup>

The first factor is the risk that a competitor would selectively target service only to the low cost areas of the rural ILEC's study areas. The affidavits of Mark Smith state that the risk of cream skimming has been practically eliminated because incumbent rural telephone companies can now utilize a process known as "disaggregation," which allows these companies to target their per-line support to better reflect the actual costs of serving different areas throughout their study areas. In the *Virginia Cellular ETC Order* the FCC determined that, because Virginia Cellular was limited to providing facilities-based service only where it is licensed by the FCC, and because Virginia Cellular commits to providing universal service throughout its licensed territory, concerns regarding cream skimming are minimized.<sup>2</sup> We find no evidence in this proceeding of rural cream skinning effects in redefining the service areas requested by the Partnerships.

The second factor to consider is the regulatory status enjoyed by rural telephone companies under the Act. The affidavits of Mark Smith state that nothing in the service area redefinition process for an ETC applicant affects the rural carrier's various statutory exemptions under the Act, nor does the redefinition process eliminate the public interest analysis to the designation of an additional ETC in the rural telephone company's service area. In the *Virginia Cellular ETC Order* the FCC determined that (1) the high-cost universal service mechanisms support all lines served by ETCs in rural areas; (2) receipt of high-cost support by Virginia Cellular will not affect the total amount of high-cost support that the incumbent rural telephone company receives; (3) to the extent that Virginia Cellular or any future competitive ETC captures incumbent rural telephone company lines, provides new lines to currently unserved customers, or provides second lines to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve; and (4) redefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.<sup>3</sup> Based on the evidence in this proceeding we conclude that there is little likelihood of harm to the rural companies. No evidence in this proceeding regarding the regulatory status enjoyed by rural telephone companies under the Act leads us to conclude that the Partnerships' request for redefined study areas should not be granted.

The third factor to consider is whether any administrative burdens might result from the redefinition of the service area requirement. The affidavits of Mark Smith state that the administrative ease of calculating costs on a less-than-study area level is not an issue because any federal universal service support available to a competitive ETC in

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, adopted December 31, 2003, released January 22, 2004 (*Virginia Cellular ETC Order*)

<sup>2</sup> *Id.* ¶ 42

<sup>3</sup> *Id.* ¶ 43

an area served by one of the rural telephone companies would be determined based on the per-line support available to the rural telephone company itself. In the *Virginia Cellular ETC Order* the FCC determined that redefining the rural telephone company service areas will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire incumbent local exchange company study area. The redefinition does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. The FCC found that the concern that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies was not at issue.<sup>4</sup> No evidence in this proceeding regarding administrative burdens for rural telephone companies leads us to conclude that the Partnerships' request for redefined study areas should be denied.

The affidavits of Mark Smith state that redefinition is in the public interest because it will enable the Partnerships to bring new services and new technologies to customers of North Dakota's rural telephone companies, who now have no choice of universal service providers. The affidavit further states that, because competitor and incumbent licensed service territories are geographically different, and because the study areas of the rural telephone companies wide-ranging, it would be nearly impossible for any other competitive carriers to compete with the incumbents without redefinition.

#### *State Statute Considerations*

The North Dakota Legislature enacted N.D.C.C. § 49-21-01.8 in 1999. This law provides that "[a] telecommunications company may not be an eligible telecommunications carrier unless the company offers all services supported by federal universal service mechanisms throughout the study area." During the same session, the Legislature further amended N.D.C.C. § 49-21-01.7 relating to powers of the Commission, specifically granting the Commission the power to:

12. Designate telecommunications companies as eligible telecommunications carriers to receive universal support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.

The established rules of statutory interpretation under N.D.C.C. § 1-02-07 require the Commission, if possible, to construe provisions in the same statute so that effect can be given to all provisions. N.D.C.C. § 1-02-09.1 requires that amendments to a statute enacted at the same legislative session are to be harmonized, if possible, so that

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<sup>4</sup> Id. ¶ 44

effect can be given to each. N.D.C.C. § 1-02-38 provides that when the Legislature enacts a statute, it is presumed that the entire statute is intended to be effective, a just and reasonable result is intended, and that it complies with the constitutions of the State of North Dakota and the United States.

As noted above, N.D.C.C. § 49-21-01.7(12) specifically empowers the Commission to designate ETCs under sections 214 and 254 of the federal act. Furthermore, N.D.C.C. § 49-21-01.7(13) expressly gives the Commission the power to designate geographic service areas . . . under the federal act.” These delegations of power from the Legislature necessarily includes the power to redefine a rural company’s “service area” to something less than the company’s “study area” as permitted under 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207. If N.D.C.C. § 49-21-01.8 were construed to restrict an ETC designation to only a study area basis, and without the opportunity for an applicant to seek to redefine the service area requirement consistent with section 214(e)(5), the state law would have the effect of denying the applicant rights that have been conferred by federal law and would render the delegation of power to the Commission meaningless.

Another consideration is that a state law provision that would be construed to limit a federal ETC to providing the supported services throughout a rural telephone company’s “study area” would likely be preempted under both 47 U.S.C. § 254(f) and 47 U.S.C. § 253(a). Section 254(f) limits a state’s authority to adopting “regulations not inconsistent with the [FCC’s] rules to preserve and advance universal service.” Restricting ETC designations under state law to only a study area basis would be inconsistent and directly in conflict with both 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b), which both expressly contemplate and permit the redefinition of the service area requirement for purposes of federal ETC designations. Also, 47 U.S.C. § 253(a) provides that no state statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide interstate telecommunications service. A state law that would be construed to deny designation of federal ETC status based on a study area requirement could essentially prohibit the Partnerships’ ability to provide the supported services.

The Commission finds that the proper focus of N.D.C.C. § 49-21-08.1 is that an ETC is required to offer all services supported by federal universal service mechanisms throughout the applicable area in which it has been granted ETC status. This requirement makes the state statute consistent with the obligation of an ETC under 47 U.S.C. § 214(e)(1) of the federal act.

The Commission’s action to redefine the service area requirement as requested by the Partnerships is necessary to facilitate the granting of the federal ETC to the Partnerships in the areas of the rural telephone companies’ service areas that fall within Verizon Wireless’ CMRS licensed areas.

#### *Joint Stipulation*



The RTCG members have withdrawn their opposition in these proceedings. The February 6, 2004 Joint Stipulation states that, based on the Commission's decision granting ETC status to Western Wireless in Case No. PU-1564-98-428, the RTCG does not contest the designation of the Partnerships as a federal ETC in those areas where the Partnerships serve the entire study area. The parties stipulate that the Commission may issue Orders in each of the captioned dockets to grant conditional ETC designation in rural service areas where the Partnerships redefine the service area requirement for purposes of ETC designation, subject to the FCC approval of the redefined service area requirement under 47 C.F.R. § 54.207(c). The parties stipulate that redefining the rural service areas for the purposes of the Partnerships universal service support shall not be construed as an agreement to redefine the study areas for purposes of RTCG members universal service support nor construed to constitute a waiver of the RTCG's rights to object to or contest any future ETC applications.

### **Conclusion**

Based on the evidence in this proceeding, each applicant is qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding and it is in the public interest the Partnerships each be designated as an ETC in the requested designated service areas.

### **Order**

The Commission orders:

1. Northwest Dakota Cellular of North Dakota Limited Partnership is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support in the service area requested as follows: (a) is designated in those study areas not requiring redefinition and, (b) in those study areas where redefinition is required under 47 C.F.R. § 54.207(c), is designated conditioned upon FCC approval.
2. North Central RSA 2 of North Dakota Limited Partnership is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support in the service area requested conditioned upon FCC approval under 47 C.F.R. § 54.207(c) of the requested redefined study areas.
3. North Dakota RSA No. 3 Limited Partnership is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support in the service area requested as follows: (a) is designated in those study areas not requiring redefinition and, (b) in those study areas where redefinition is required under 47 C.F.R. § 54.207(c), is designated conditioned upon FCC approval.
4. Badlands Cellular of North Dakota Limited Partnership is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support in the service area requested as follows: (a) is designated in those study areas not requiring redefinition and, (b) in those study areas where redefinition is required under 47 C.F.R. § 54.207(c), is designated conditioned upon FCC approval.

5. North Dakota 5 – Kidder Limited Partnership is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support in the service area requested as follows: (a) is designated in those study areas not requiring redefinition and, (b) in those study areas where redefinition is required under 47 C.F.R. § 54.207(c), is designated conditioned upon FCC approval.

6. Bismarck MSA Limited Partnership is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support in the service area requested as follows: (a) is designated in those study areas not requiring redefinition and, (b) in those study areas where redefinition is required under 47 C.F.R. § 54.207(c), is designated conditioned upon FCC approval.

7. Each of the applicants is designated as an eligible telecommunications carrier for the purpose of receiving federal universal service support in the designated service areas conditioned upon the filing of a tariff for its universal service, Lifeline, and Link-Up offerings.

8. Each of the applicants shall file quarterly reports to the Commission describing the status of its wireless E-911 implementation in North Dakota.

#### **PUBLIC SERVICE COMMISSION**

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**Susan E. Wefald**  
**Commissioner**

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**Tony Clark**  
**President**

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**Kevin Cramer**  
**Commissioner**

## **EXHIBIT B**

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

In the Matter of Northwest Dakota Cellular )  
of North Dakota Limited Partnership )  
d/b/a Verizon Wireless )  
Petition for Designation as an )  
Eligible Telecommunications Carrier )

Case No. PU-1226-03-597

**JOINT STIPULATION REGARDING  
REDEFINITION OF SERVICE AREA REQUIREMENT**

This Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulation") is entered into between and among Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceeding.

As set forth more fully below, and in the Joint Stipulation of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw

their objections in the above-captioned proceeding and agree the service area requirement should be redefined as necessary for purposes of Verizon Wireless' designation as an additional eligible telecommunications carrier ("ETC") from the "study area" to all wire centers or partial wire centers of the Rural Telephone Companies located within the geographic boundaries of North Dakota Rural Service Area 1 ("RSA 1").

1. On October 15, 2003, Verizon Wireless filed with the Commission an Application for Designation as an Eligible Telecommunications Carrier and Petition for Redefinition of Service Areas of Rural Telephone Companies (the "Application"), pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12). Exhibit A to the Application identifies the particular areas for which designation is sought. Exhibit B to the Application is a map comparing Verizon Wireless' current authorized cellular coverage areas in North Dakota RSA 1 with the wire center boundaries of each local exchange carrier.

2. Upon further review of the Application, Verizon Wireless serves a wire center of BEK Communications Cooperative ("BEK Communications") in RSA 1 that was inadvertently not included in the requested designated areas in the Application. Accordingly, an Amended Exhibit A, including the BEK Communications wire center previously omitted, was filed with the Commission.

3. Verizon Wireless currently serves areas in North Dakota RSA 1 also served by nine rural telephone companies, namely, BEK Communications, Nemont Telephone Cooperative, Inc. ("Nemont Telephone"), Noonan Farmers Telephone Company ("Noonan Farmers"), Northwest Communications Cooperative ("Northwest Communications"), Midstate Telephone Company ("Midstate Telephone"), Reservation Telephone Cooperative ("Reservation Telephone"), SRT Communications, Inc. ("SRT Communications"), Missouri Valley Communications ("Missouri Valley"), and West River Telecommunications ("West River Telecom").

4. Verizon Wireless serves the entire study area of Noonan Farmers and Northwest Communications and thus satisfies Section 214(e)(5) as to the areas served by those telephone companies. It is not necessary to redefine the service area requirement for purposes of Verizon Wireless' ETC designation for those telephone companies.

5. The respective study areas of BEK Communications, Nemont Telephone, Midstate Telephone, Reservation Telephone, SRT Communications, Missouri Valley, and West River Telecom do not correspond with Verizon Wireless' CMRS licensed area or existing signal coverage area in North Dakota RSA 1. Therefore, the Commission should redefine the service area requirement for purposes of Verizon Wireless' ETC designation, pursuant to 47 C.F.R. § 54.207, to enable Verizon Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e).

6. Accordingly, Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Application and

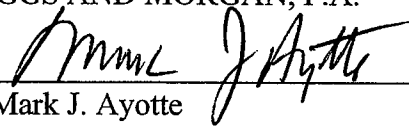
agree that the Commission may issue an Order consistent with this Stipulation to redefine the service area requirement for purposes of designating Verizon Wireless as federal ETC as set forth on Exhibit A.

7. Nothing in this Stipulation shall be construed as an agreement to redefine the Rural Telephone Companies' study area for the purposes of their receipt of universal service support nor shall it be construed to constitute a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other documents and this Stipulation shall be limited solely to the purposes of the above-captioned proceeding.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

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Dated: February 4<sup>th</sup>, 2004

## **EXHIBIT A**

### **I. Areas for Which Verizon Wireless Should Be Granted ETC Designation**

1. Noonan Farmers Telephone Company – North Dakota Study Area
2. Northwest Communications Cooperative – North Dakota Study Area

### **II. Areas for Which Verizon Wireless Should Be Granted Conditional ETC Designation Subject to Redefinition of the Service Area Requirement**

1. BEK Communications Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 1
2. Nemont Telephone Cooperative, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 1
3. Midstate Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 1
4. Reservation Telephone Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 1
5. SRT Communications, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 1
6. Missouri Valley Communications – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 1
7. West River Telecommunications Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 1

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Northwest Dakota Cellular of North  
Dakota Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-1226-03-597

North Central RSA 2 of North Dakota  
Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-386-03-598

North Dakota RSA 3 of North Dakota  
Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-897-03-599

Badlands Cellular of North Dakota  
Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-1255-03-600

North Dakota 5 – Kidder Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-338-03-601

Bismarck MSA Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-494-03-602

**JOINT STIPULATION**

This Joint Stipulation is entered into between and among Northwest Dakota Cellular of North Dakota Limited Partnership, North Central RSA 2 of North Dakota Limited Partnership, North Dakota RSA No. 3 of North Dakota Limited Partnership, Badlands Cellular of North Dakota Limited Partnership, North Dakota 5 – Kidder Limited Partnership and Bismarck MSA Limited Partnership (individually and collectively “Verizon Wireless”) and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar



Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceedings.

As set forth more fully below, and in the separate Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulations") of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw their objections in the above-captioned proceedings and agree the Verizon Wireless entities may be designated as a federal eligible telecommunications carrier ("ETC") as follows:

1. On December 5, 2003, the Rural Telephone Companies filed a Notice of Appearance in response to the Commission's Notice of Opportunity for Hearing and Notice of Informal Hearing dated October 22, 2003. Based on the Commission's decision granting ETC status to Western Wireless in Case No. PU-1564-98-428, the Rural Telephone Companies did not contest the designation of Verizon Wireless as a federal ETC in those areas where Verizon Wireless served the entire study area. The Rural Telephone Companies' interest in the proceedings was limited to Verizon Wireless' request to redefine the service area requirement for purposes of its ETC designation.

2. On December 17, 2003, an informal hearing was held before the Commission. At the informal hearing, Verizon Wireless presented an overview of the Applications and various Affidavits demonstrating its compliance with the requirements to be designated a federal ETC. The Rural Telephone Companies were also given an opportunity to be heard.

3. Verizon Wireless' network includes cell sites, antennas and other network facilities and infrastructure which were installed and constructed throughout the areas served by the Rural Telephone Companies prior to the enactment of the 1996 Act and not solely for the purposes of obtaining ETC status.

4. Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Applications and agree that the Commission may issue Orders consistent with this Stipulation and the Service Area Stipulations in each of the above-captioned dockets to grant ETC designation for those areas that Verizon

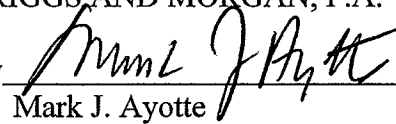
Wireless wholly serves, as identified on each Exhibit A to each Application. Verizon Wireless and the Rural Telephone Companies further stipulate, agree and request that the Commission may issue Orders in each of the above-captioned dockets to grant conditional ETC designation in all other Rural Telephone Company service areas identified on Exhibit A to each Application, subject to the FCC's approval of the redefined service area requirement under 47 C.F.R. § 54.207(c) as more fully set forth in the Service Area Stipulations.

5. Nothing in this Stipulation shall be construed to constitute a redefinition of any Rural Telephone Company study area for the receipt of universal service support by the Rural Telephone Company or a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other dockets and this Stipulation shall be limited only to the purposes of the above-captioned proceedings.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

By

  
Mark J. Ayotte

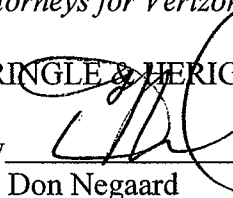
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Dated: February 4, 2004

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

In the Matter of North Central RSA 2 of )  
North Dakota Limited Partnership )  
d/b/a Verizon Wireless )  
Petition for Designation as an )  
Eligible Telecommunications Carrier )

Case No. PU-386-03-598

**JOINT STIPULATION REGARDING  
REDEFINITION OF SERVICE AREA REQUIREMENT**

This Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulation") is entered into between and among North Central RSA 2 of North Dakota Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceeding.

As set forth more fully below, and in the Joint Stipulation of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw

their objections in the above-captioned proceeding and agree the service area requirement should be redefined as necessary for purposes of Verizon Wireless' designation as an additional eligible telecommunications carrier ("ETC") from the "study area" to all wire centers or partial wire centers of the Rural Telephone Companies located within the geographic boundaries of North Dakota Rural Service Area 2 ("RSA 2").

1. On October 15, 2003, Verizon Wireless filed with the Commission an Application for Designation as an Eligible Telecommunications Carrier and Petition for Redefinition of Service Areas of Rural Telephone Companies (the "Application"), pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12). Exhibit A to the Application identifies the particular areas for which designation is sought. Exhibit B to the Application is a map comparing Verizon Wireless' current authorized cellular coverage areas in North Dakota RSA 2 with the wire center boundaries of each local exchange carrier.

2. Verizon Wireless currently serves areas in North Dakota RSA 2 also served by seven rural telephone companies, namely, Turtle Mountain Communications ("Turtle Mountain"), SRT Communications, Inc. ("SRT Communications"), United Telephone Mutual Aid Corporation ("United Telephone"), North Dakota Telephone Company ("North Dakota Telephone"), York Telephone Company ("York Telephone"), Polar Telecommunications, Inc. ("Polar Telecom"), and Polar Communications Mutual Aid Corporation ("Polar Communications").

3. Verizon Wireless serves the entire study area of Turtle Mountain and thus satisfies Section 214(e)(5) as to the area served by this telephone company. It is not necessary to redefine the service area requirement for purposes of Verizon Wireless' ETC designation for this telephone company.

4. The respective study areas of SRT Communications, United Telephone, North Dakota Telephone, York Telephone, Polar Telecom, and Polar Communications do not correspond with Verizon Wireless' CMRS licensed area or existing signal coverage area in North Dakota RSA 2. Therefore, the Commission should redefine the service area requirement for purposes of Verizon Wireless' ETC designation, pursuant to 47 C.F.R. § 54.207, to enable Verizon Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e).

5. Accordingly, Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Application and agree that the Commission may issue an Order consistent with this Stipulation to redefine the service area requirement for purposes of designating Verizon Wireless as federal ETC as set forth on Exhibit A.

6. Nothing in this Stipulation shall be construed as an agreement to redefine the Rural Telephone Companies' study area for the purposes of their receipt of universal service support nor shall it be construed to constitute a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in

other documents and this Stipulation shall be limited solely to the purposes of the above-captioned proceeding.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

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Mark J. Ayotte

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*Attorneys for Rural Telephone Companies*

Dated: February 4<sup>th</sup>, 2004

## **EXHIBIT A**

### **I. Areas for Which Verizon Wireless Should Be Granted ETC Designation**

1. Turtle Mountain Communications – North Dakota Study Area

### **II. Areas for Which Verizon Wireless Should Be Granted Conditional ETC Designation Subject to Redefinition of the Service Area Requirement**

1. SRT Communications, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 2
2. United Telephone Mutual Aid Corporation – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 2
3. North Dakota Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 2
4. York Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 2
5. Polar Telecommunications, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 2
6. Polar Communications Mutual Aid Corporation – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 2

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Northwest Dakota Cellular of North  
Dakota Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-1226-03-597

North Central RSA 2 of North Dakota  
Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-386-03-598

North Dakota RSA 3 of North Dakota  
Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-897-03-599

Badlands Cellular of North Dakota  
Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-1255-03-600

North Dakota 5 – Kidder Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-338-03-601

Bismarck MSA Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-494-03-602

**JOINT STIPULATION**

This Joint Stipulation is entered into between and among Northwest Dakota Cellular of North Dakota Limited Partnership, North Central RSA 2 of North Dakota Limited Partnership, North Dakota RSA No. 3 of North Dakota Limited Partnership, Badlands Cellular of North Dakota Limited Partnership, North Dakota 5 – Kidder Limited Partnership and Bismarck MSA Limited Partnership (individually and collectively “Verizon Wireless”) and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar

Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceedings.

As set forth more fully below, and in the separate Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulations") of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw their objections in the above-captioned proceedings and agree the Verizon Wireless entities may be designated as a federal eligible telecommunications carrier ("ETC") as follows:

1. On December 5, 2003, the Rural Telephone Companies filed a Notice of Appearance in response to the Commission's Notice of Opportunity for Hearing and Notice of Informal Hearing dated October 22, 2003. Based on the Commission's decision granting ETC status to Western Wireless in Case No. PU-1564-98-428, the Rural Telephone Companies did not contest the designation of Verizon Wireless as a federal ETC in those areas where Verizon Wireless served the entire study area. The Rural Telephone Companies' interest in the proceedings was limited to Verizon Wireless' request to redefine the service area requirement for purposes of its ETC designation.

2. On December 17, 2003, an informal hearing was held before the Commission. At the informal hearing, Verizon Wireless presented an overview of the Applications and various Affidavits demonstrating its compliance with the requirements to be designated a federal ETC. The Rural Telephone Companies were also given an opportunity to be heard.

3. Verizon Wireless' network includes cell sites, antennas and other network facilities and infrastructure which were installed and constructed throughout the areas served by the Rural Telephone Companies prior to the enactment of the 1996 Act and not solely for the purposes of obtaining ETC status.

4. Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Applications and agree that the Commission may issue Orders consistent with this Stipulation and the Service Area Stipulations in each of the above-captioned dockets to grant ETC designation for those areas that Verizon



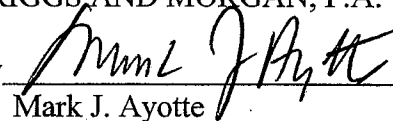
Wireless wholly serves, as identified on each Exhibit A to each Application. Verizon Wireless and the Rural Telephone Companies further stipulate, agree and request that the Commission may issue Orders in each of the above-captioned dockets to grant conditional ETC designation in all other Rural Telephone Company service areas identified on Exhibit A to each Application, subject to the FCC's approval of the redefined service area requirement under 47 C.F.R. § 54.207(c) as more fully set forth in the Service Area Stipulations.

5. Nothing in this Stipulation shall be construed to constitute a redefinition of any Rural Telephone Company study area for the receipt of universal service support by the Rural Telephone Company or a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other dockets and this Stipulation shall be limited only to the purposes of the above-captioned proceedings.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

By



Mark J. Ayotte

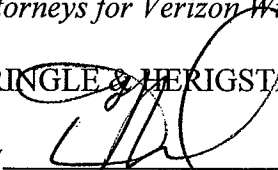
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*Attorneys for Rural Telephone Companies*

Dated: February 4, 2004

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

In the Matter of North Dakota RSA 3 Limited )  
Partnership d/b/a Verizon Wireless )  
Petition for Designation as an )  
Eligible Telecommunications Carrier )  
)

Case No. PU-897-03-599

**JOINT STIPULATION REGARDING  
REDEFINITION OF SERVICE AREA REQUIREMENT**

This Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulation") is entered into between and among North Dakota RSA No. 3 Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceeding.

As set forth more fully below, and in the Joint Stipulation of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw

their objections in the above-captioned proceeding and agree the service area requirement should be redefined as necessary for purposes of Verizon Wireless' designation as an additional eligible telecommunications carrier ("ETC") from the "study area" to all wire centers or partial wire centers of the Rural Telephone Companies located within the geographic boundaries of North Dakota Rural Service Area 3 ("RSA 3").

1. On October 15, 2003, Verizon Wireless filed with the Commission an Application for Designation as an Eligible Telecommunications Carrier and Petition for Redefinition of Service Areas of Rural Telephone Companies (the "Application"), pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12). Exhibit A to the Application identifies the particular areas for which designation is sought. Exhibit B to the Application is a map comparing Verizon Wireless' current authorized cellular coverage areas in North Dakota RSA 3 with the wire center boundaries of each local exchange carrier.

2. Verizon Wireless currently serves areas in North Dakota RSA 3 also served by Qwest and twenty-one rural telephone companies, namely, Citizens Telecom Company MN/Frontier Citizens Communications MN ("Citizens Telecom"), Dickey Rural Access, Inc. ("Dickey Rural Access"), Halstad Telephone Company ("Halstad Telephone"), James Valley Cooperative Telephone Company ("James Valley Cooperative"), RC Communications, Inc. ("RC Communications"), Red River Rural Telephone Association North Dakota ("Red River Rural Telephone"), Red River Telecommunications, Inc. ("Red River Telecom"), Roberts County Telephone Cooperative Association ("Roberts County Telephone"), Venture Communications Cooperative ("Venture Communications"), Wolverton Telephone Company ("Wolverton Telephone"), Dakota Central Telecom I, Inc., Inc. ("Dakota Central Telecom"), Dakota Central Telecommunications Cooperative ("Dakota Central Telecom Co-op"), Dickey Rural Communications, Inc. ("Dickey Rural Communications"), Dickey Rural Telephone Cooperative ("Dickey Rural Telephone"), Griggs County Telephone Company ("Griggs County Telephone"), Inter-Community Telephone Company LLC ("Inter-Community Telephone"), Moore and Liberty Telephone Company ("Moore and Liberty Telephone"), North Dakota Telephone Company ("North Dakota Telephone"), Polar Communications Mutual Aid Corporation ("Polar Communications"), Polar Telecommunications, Inc. ("Polar Telecom"), and United Telephone Mutual Aid Cooperation ("United Telephone").

3. Verizon Wireless serves the entire study area of Citizens Telecom, Halstad Telephone, James Valley Cooperative, RC Communications, Red River Rural Telephone, Red River Telecom, Roberts County Telephone, Venture Communications, and Wolverton Telephone and thus satisfies Section 214(e)(5) as to the areas served by those telephone companies. It is not necessary to redefine the service area requirement for purposes of Verizon Wireless' ETC designation for those telephone companies.

4. The respective study areas of Dakota Central Telecom, Dakota Central Telecom Co-op, Dickey Rural Communications, Dickey Rural Telephone and Dickey Rural Access, Griggs County Telephone, Inter-Community Telephone, Moore and Liberty Telephone, North Dakota Telephone, Polar Communications, Polar Telecom, and United Telephone do not

correspond with Verizon Wireless' CMRS licensed area or existing signal coverage area in North Dakota RSA 3. Therefore, the Commission should redefine the service area requirement for purposes of Verizon Wireless' ETC designation, pursuant to 47 C.F.R. § 54.207, to enable Verizon Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e).

5. Accordingly, Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Application and agree that the Commission may issue an Order consistent with this Stipulation to redefine the service area requirement for purposes of designating Verizon Wireless as federal ETC as set forth on Exhibit A.

6. Nothing in this Stipulation shall be construed as an agreement to redefine the Rural Telephone Companies' study area for the purposes of their receipt of universal service support nor shall it be construed to constitute a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other documents and this Stipulation shall be limited solely to the purposes of the above-captioned proceeding.

Dated: February 4, 2004

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Dated: February 4<sup>th</sup>, 2004

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## **EXHIBIT A**

### **I. Areas for Which Verizon Wireless Should Be Granted ETC Designation**

1. Qwest Corporation – Exchanges
  - Grafton
  - Minto
  - Northwood
  - Hatton
  - Mayville
  - Reynolds
  - Hillsboro
  - Jamestown
  - Valley City
  - Leonard
  - Kindred
  - Wahpeton
  - Gardner
  - Hickson
  - Thompson
2. Citizens Telecom Company MN/Frontier Citizens Communications MN – North Dakota Study Area
3. Halstad Telephone Company – North Dakota Study Area
4. James Valley Cooperative Telephone Company – North Dakota Study Area
5. RC Communications, Inc. – North Dakota Study Area
6. Red River Rural Telephone Association North Dakota – North Dakota Study Area
7. Red River Telecommunications, Inc. – North Dakota Study Area
8. Roberts County Telephone Cooperative Association – North Dakota Study Area
9. Venture Communications Cooperative – North Dakota Study Area
10. Wolverton Telephone Company – North Dakota Study Area

**II. Areas for Which Verizon Wireless Should Be Granted Conditional ETC Designation Subject to Redefinition of the Service Area Requirement**

1. Dakota Central Telecom I, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
2. Dakota Central Telecommunications Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
3. Dickey Rural Access, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
4. Dickey Rural Communications, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
5. Dickey Rural Telephone Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
6. Griggs County Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
7. Inter-Community Telephone Company LLC – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
8. Moore and Liberty Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
9. North Dakota Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
10. Polar Communications Mutual Aid Corporation – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
11. Polar Telecommunications, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3
12. United Telephone Mutual Aid Corporation – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 3

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

|  |                         |
|--|-------------------------|
| Northwest Dakota Cellular of North<br>Dakota Limited Partnership<br>Designation Eligible Carrier Application | Case No. PU-1226-03-597 |
| North Central RSA 2 of North Dakota<br>Limited Partnership<br>Designation Eligible Carrier Application       | Case No. PU-386-03-598  |
| North Dakota RSA 3 of North Dakota<br>Limited Partnership<br>Designation Eligible Carrier Application        | Case No. PU-897-03-599  |
| Badlands Cellular of North Dakota<br>Limited Partnership<br>Designation Eligible Carrier Application         | Case No. PU-1255-03-600 |
| North Dakota 5 – Kidder Limited Partnership<br>Designation Eligible Carrier Application                      | Case No. PU-338-03-601  |
| Bismarck MSA Limited Partnership<br>Designation Eligible Carrier Application                                 | Case No. PU-494-03-602  |

**JOINT STIPULATION**

This Joint Stipulation is entered into between and among Northwest Dakota Cellular of North Dakota Limited Partnership, North Central RSA 2 of North Dakota Limited Partnership, North Dakota RSA No. 3 of North Dakota Limited Partnership, Badlands Cellular of North Dakota Limited Partnership, North Dakota 5 – Kidder Limited Partnership and Bismarck MSA Limited Partnership (individually and collectively “Verizon Wireless”) and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar



Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceedings.

As set forth more fully below, and in the separate Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulations") of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw their objections in the above-captioned proceedings and agree the Verizon Wireless entities may be designated as a federal eligible telecommunications carrier ("ETC") as follows:

1. On December 5, 2003, the Rural Telephone Companies filed a Notice of Appearance in response to the Commission's Notice of Opportunity for Hearing and Notice of Informal Hearing dated October 22, 2003. Based on the Commission's decision granting ETC status to Western Wireless in Case No. PU-1564-98-428, the Rural Telephone Companies did not contest the designation of Verizon Wireless as a federal ETC in those areas where Verizon Wireless served the entire study area. The Rural Telephone Companies' interest in the proceedings was limited to Verizon Wireless' request to redefine the service area requirement for purposes of its ETC designation.

2. On December 17, 2003, an informal hearing was held before the Commission. At the informal hearing, Verizon Wireless presented an overview of the Applications and various Affidavits demonstrating its compliance with the requirements to be designated a federal ETC. The Rural Telephone Companies were also given an opportunity to be heard.

3. Verizon Wireless' network includes cell sites, antennas and other network facilities and infrastructure which were installed and constructed throughout the areas served by the Rural Telephone Companies prior to the enactment of the 1996 Act and not solely for the purposes of obtaining ETC status.

4. Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Applications and agree that the Commission may issue Orders consistent with this Stipulation and the Service Area Stipulations in each of the above-captioned dockets to grant ETC designation for those areas that Verizon

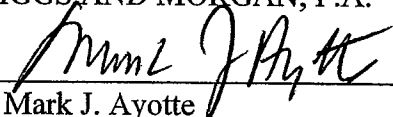
Wireless wholly serves, as identified on each Exhibit A to each Application. Verizon Wireless and the Rural Telephone Companies further stipulate, agree and request that the Commission may issue Orders in each of the above-captioned dockets to grant conditional ETC designation in all other Rural Telephone Company service areas identified on Exhibit A to each Application, subject to the FCC's approval of the redefined service area requirement under 47 C.F.R. § 54.207(c) as more fully set forth in the Service Area Stipulations.

5. Nothing in this Stipulation shall be construed to constitute a redefinition of any Rural Telephone Company study area for the receipt of universal service support by the Rural Telephone Company or a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other dockets and this Stipulation shall be limited only to the purposes of the above-captioned proceedings.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

By

  
Mark J. Ayotte

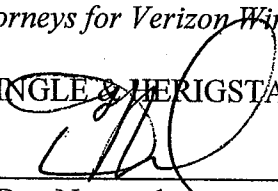
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Facsimile No. (701) 857-1361

*Attorneys for Rural Telephone Companies*

Dated: February 4, 2004

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

In the Matter of Badlands Cellular of North Dakota )  
Limited Partnership d/b/a Verizon Wireless )  
Petition for Designation as an )  
Eligible Telecommunications Carrier )  
)

Case No. PU-1225-03-600

**JOINT STIPULATION REGARDING  
REDEFINITION OF SERVICE AREA REQUIREMENT**

This Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulation") is entered into between and among Badlands Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceeding.

As set forth more fully below, and in the Joint Stipulation of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw

their objections in the above-captioned proceeding and agree the service area requirement should be redefined as necessary for purposes of Verizon Wireless' designation as an additional eligible telecommunications carrier ("ETC") from the "study area" to all wire centers or partial wire centers of the Rural Telephone Companies located within the geographic boundaries of North Dakota Rural Service Area 4 ("RSA 4").

1. On October 15, 2003, Verizon Wireless filed with the Commission an Application for Designation as an Eligible Telecommunications Carrier and Petition for Redefinition of Service Areas of Rural Telephone Companies (the "Application"), pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12). Exhibit A to the Application identifies the particular areas for which designation is sought. Exhibit B to the Application is a map comparing Verizon Wireless' current authorized cellular coverage areas in North Dakota RSA 4 with the wire center boundaries of each local exchange carrier.

2. Verizon Wireless currently serves areas in North Dakota RSA 4 also served by Qwest and eight rural telephone companies, namely, Consolidated Telecom, West River Cooperative Telephone Company ("West River Cooperative"), West River Telecommunications Cooperative South Dakota ("West River Telecom SD"), Midstate Telephone Company ("Midstate Telephone"), West River Telecommunications Cooperative North Dakota ("West River Telecom ND"), Reservation Telephone Cooperative ("Reservation Telephone"), Mid-Rivers Telephone Cooperative, Inc. ("Mid-Rivers Telephone"), and York Telephone Company ("York Telephone").

3. Verizon Wireless serves the entire study area of Consolidated Telecom, West River Cooperative, and West River Telecom SD and thus satisfies Section 214(e)(5) as to the areas served by those telephone companies. It is not necessary to redefine the service area requirement for purposes of Verizon Wireless' ETC designation for those telephone companies.

4. The respective study areas of Midstate Telephone, West River Telecom ND, Reservation Telephone, Mid-Rivers Telephone, and York Telephone do not correspond with Verizon Wireless' CMRS licensed area or existing signal coverage area in North Dakota RSA 4. Therefore, the Commission should redefine the service area requirement for purposes of Verizon Wireless' ETC designation, pursuant to 47 C.F.R. § 54.207, to enable Verizon Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e).


5. Accordingly, Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Application and agree that the Commission may issue an Order consistent with this Stipulation to redefine the service area requirement for purposes of designating Verizon Wireless as federal ETC as set forth on Exhibit A.

6. Nothing in this Stipulation shall be construed as an agreement to redefine the Rural Telephone Companies' study area for the purposes of their receipt of universal service support nor shall it be construed to constitute a waiver of the Rural Telephone Companies' rights

to object to or contest any future ETC applications which may be filed with the Commission in other documents and this Stipulation shall be limited solely to the purposes of the above-captioned proceeding.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

By   
Mark J. Ayotte


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*Attorneys for Verizon Wireless*

PRINGLE & HERIGSTAD

Dated: February 4, 2004

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Facsimile No. (701) 857-1361

*Attorneys for Rural Telephone Companies*

## **EXHIBIT A**

### **I. Areas for Which Verizon Wireless Should Be Granted ETC Designation**

1. Qwest Corporation – Exchanges
  - Belfield
  - Mandan
  - Dickinson
  - East Sidney
  - East Fairview
  - North McIntosh
  - North Morristown
2. Consolidated Telecom – North Dakota Study Area
3. West River Cooperative Telephone Company – North Dakota Study Area
4. West River Telecommunications Cooperative South Dakota – North Dakota Study Area

### **II. Areas for Which Verizon Wireless Should Be Granted Conditional ETC Designation Subject to Redefinition of the Service Area Requirement**

1. Midstate Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 4
2. West River Telecommunications Cooperative North Dakota – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 4
3. Reservation Telephone Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 4
4. Mid-Rivers Telephone Cooperative, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 4
5. York Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 4

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

|  |                         |
|--|-------------------------|
| Northwest Dakota Cellular of North<br>Dakota Limited Partnership<br>Designation Eligible Carrier Application | Case No. PU-1226-03-597 |
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| North Central RSA 2 of North Dakota<br>Limited Partnership<br>Designation Eligible Carrier Application | Case No. PU-386-03-598 |
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| North Dakota RSA 3 of North Dakota<br>Limited Partnership<br>Designation Eligible Carrier Application | Case No. PU-897-03-599 |
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| Badlands Cellular of North Dakota<br>Limited Partnership<br>Designation Eligible Carrier Application | Case No. PU-1255-03-600 |
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|---|------------------------|
| North Dakota 5 – Kidder Limited Partnership<br>Designation Eligible Carrier Application | Case No. PU-338-03-601 |
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|--|------------------------|
| Bismarck MSA Limited Partnership<br>Designation Eligible Carrier Application | Case No. PU-494-03-602 |
|--|------------------------|

**JOINT STIPULATION**

This Joint Stipulation is entered into between and among Northwest Dakota Cellular of North Dakota Limited Partnership, North Central RSA 2 of North Dakota Limited Partnership, North Dakota RSA No. 3 of North Dakota Limited Partnership, Badlands Cellular of North Dakota Limited Partnership, North Dakota 5 – Kidder Limited Partnership and Bismarck MSA Limited Partnership (individually and collectively “Verizon Wireless”) and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar

Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceedings.

As set forth more fully below, and in the separate Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulations") of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw their objections in the above-captioned proceedings and agree the Verizon Wireless entities may be designated as a federal eligible telecommunications carrier ("ETC") as follows:

1. On December 5, 2003, the Rural Telephone Companies filed a Notice of Appearance in response to the Commission's Notice of Opportunity for Hearing and Notice of Informal Hearing dated October 22, 2003. Based on the Commission's decision granting ETC status to Western Wireless in Case No. PU-1564-98-428, the Rural Telephone Companies did not contest the designation of Verizon Wireless as a federal ETC in those areas where Verizon Wireless served the entire study area. The Rural Telephone Companies' interest in the proceedings was limited to Verizon Wireless' request to redefine the service area requirement for purposes of its ETC designation.

2. On December 17, 2003, an informal hearing was held before the Commission. At the informal hearing, Verizon Wireless presented an overview of the Applications and various Affidavits demonstrating its compliance with the requirements to be designated a federal ETC. The Rural Telephone Companies were also given an opportunity to be heard.

3. Verizon Wireless' network includes cell sites, antennas and other network facilities and infrastructure which were installed and constructed throughout the areas served by the Rural Telephone Companies prior to the enactment of the 1996 Act and not solely for the purposes of obtaining ETC status.

4. Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Applications and agree that the Commission may issue Orders consistent with this Stipulation and the Service Area Stipulations in each of the above-captioned dockets to grant ETC designation for those areas that Verizon



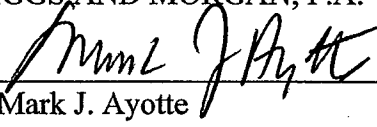
Wireless wholly serves, as identified on each Exhibit A to each Application. Verizon Wireless and the Rural Telephone Companies further stipulate, agree and request that the Commission may issue Orders in each of the above-captioned dockets to grant conditional ETC designation in all other Rural Telephone Company service areas identified on Exhibit A to each Application, subject to the FCC's approval of the redefined service area requirement under 47 C.F.R. § 54.207(c) as more fully set forth in the Service Area Stipulations.

5. Nothing in this Stipulation shall be construed to constitute a redefinition of any Rural Telephone Company study area for the receipt of universal service support by the Rural Telephone Company or a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other dockets and this Stipulation shall be limited only to the purposes of the above-captioned proceedings.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

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*Attorneys for Rural Telephone Companies*

Dated: February 4, 2004

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

In the Matter of North Dakota 5 – Kidder Limited     )  
Partnership d/b/a Verizon Wireless                     )  
Petition for Designation as an                             )  
Eligible Telecommunications Carrier                     )  
   )

Case No. PU-338-03-601

**JOINT STIPULATION REGARDING  
REDEFINITION OF SERVICE AREA REQUIREMENT**

This Joint Stipulation Regarding Redefinition of Service Area Requirement (“Service Area Stipulation”) is entered into between and among North Dakota 5 – Kidder Limited Partnership d/b/a Verizon Wireless (“Verizon Wireless”) and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively “Rural Telephone Companies”), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission (“Commission”) should accept the following stipulations for purposes of the above-captioned proceeding.

As set forth more fully below, and in the Joint Stipulation of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw

their objections in the above-captioned proceeding and agree the service area requirement should be redefined as necessary for purposes of Verizon Wireless' designation as an additional eligible telecommunications carrier ("ETC") from the "study area" to all wire centers or partial wire centers of the Rural Telephone Companies located within the geographic boundaries of North Dakota Rural Service Area 5 ("RSA 5").

1. On October 15, 2003, Verizon Wireless filed with the Commission an Application for Designation as an Eligible Telecommunications Carrier and Petition for Redefinition of Service Areas of Rural Telephone Companies (the "Application"), pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12). Exhibit A to the Application identifies the particular areas for which designation is sought. Exhibit B to the Application is a map comparing Verizon Wireless' current authorized cellular coverage areas in North Dakota RSA 5 with the wire center boundaries of each local exchange carrier.

2. Verizon Wireless currently serves areas in North Dakota RSA 5 also served by Qwest and nine rural telephone companies, namely, BEK Communications Cooperative ("BEK Communications"), Dickey Rural Telephone Cooperative ("Dickey Rural Telephone"), Dakota Central Telecommunications Cooperative ("Dakota Central Co-op"), Griggs County Telephone Company ("Griggs County Telephone"), North Dakota Telephone Company ("North Dakota Telephone"), West River Telecommunications Cooperative ("West River Telecom"), SRT Communications, Inc. ("SRT Communications"), Dakota Central Telecom I, Inc. ("Dakota Central Telecom"), and Dickey Rural Communications, Inc. ("Dickey Rural Communications").

3. The respective study areas of BEK Communications, Dickey Rural Telephone, Dakota Central Co-op, Griggs County Telephone, North Dakota Telephone, West River Telecom, SRT Communications, Dakota Central Telecom, and Dickey Rural Communications do not correspond with Verizon Wireless' CMRS licensed area or existing signal coverage area in North Dakota RSA 5. Therefore, the Commission should redefine the service area requirement for purposes of Verizon Wireless' ETC designation, pursuant to 47 C.F.R. § 54.207, to enable Verizon Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e).

4. Accordingly, Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Application and agree that the Commission may issue an Order consistent with this Stipulation to redefine the service area requirement for purposes of designating Verizon Wireless as federal ETC as set forth on Exhibit A.

5. Nothing in this Stipulation shall be construed as an agreement to redefine the Rural Telephone Companies' study area for the purposes of their receipt of universal service support nor shall it be construed to constitute a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other documents and this Stipulation shall be limited solely to the purposes of the above-captioned proceeding.

Dated: February 4, 2004

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*Attorneys for Rural Telephone Companies*

Dated: February 4, 2004

## **EXHIBIT A**

### **I. Areas for Which Verizon Wireless Should Be Granted ETC Designation**

1. Qwest Corporation – Exchanges
  - Jamestown

### **II. Areas for Which Verizon Wireless Should Be Granted Conditional ETC Designation Subject to Redefinition of the Service Area Requirement**

1. BEK Communications Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5
2. Dickey Rural Telephone Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5
3. Dakota Central Telecommunications Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5
4. Griggs County Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5
5. North Dakota Telephone Company – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5
6. West River Telecommunications Cooperative – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5
7. SRT Communications, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5
8. Dakota Central Telecom I, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5
9. Dickey Rural Communications, Inc. – All wire centers or partial wire centers located within the geographic boundaries of North Dakota RSA 5

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Northwest Dakota Cellular of North  
Dakota Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-1226-03-597

North Central RSA 2 of North Dakota  
Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-386-03-598

North Dakota RSA 3 of North Dakota  
Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-897-03-599

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Case No. PU-338-03-601

Bismarck MSA Limited Partnership  
Designation Eligible Carrier Application

Case No. PU-494-03-602

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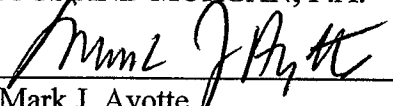
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5. Nothing in this Stipulation shall be construed to constitute a redefinition of any Rural Telephone Company study area for the receipt of universal service support by the Rural Telephone Company or a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other dockets and this Stipulation shall be limited only to the purposes of the above-captioned proceedings.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

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*Attorneys for Rural Telephone Companies*

Dated: February 4, 2004



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

In the Matter of Bismarck MSA Limited )  
Partnership d/b/a Verizon Wireless )  
Petition for Designation as an )  
Eligible Telecommunications Carrier )  
)

Case No. PU-494-03-602

**JOINT STIPULATION REGARDING  
REDEFINITION OF SERVICE AREA REQUIREMENT**

This Joint Stipulation Regarding Redefinition of Service Area Requirement ("Service Area Stipulation") is entered into between and among Bismarck MSA Limited Partnership d/b/a Verizon Wireless ("Verizon Wireless") and BEK Communications Cooperative, Consolidated Telecom, Dakota Central Telecom 1, Dakota Central Telecommunications Cooperative, Dickey Rural Access, Inc., Dickey Rural Communications, Inc., Dickey Rural Telephone Cooperative, Missouri Valley Communications, Inc., Nemont Telephone Cooperative, Inc., North Dakota Telephone Company, Northwest Communications Cooperative, Polar Communications Mutual Aid Corporation, Polar Telecommunications, Inc., Reservation Telephone Cooperative, Turtle Mountain Communications and United Telephone Mutual Aid Corporation (individually and collectively "Rural Telephone Companies"), acting by and through their respective undersigned counsel.

Based on information provided by Verizon Wireless, and after consideration of the applicable law, Verizon Wireless and the Rural Telephone Companies agree that the North Dakota Public Service Commission ("Commission") should accept the following stipulations for purposes of the above-captioned proceeding.

As set forth more fully below, and in the Joint Stipulation of the parties, Verizon Wireless and the Rural Telephone Companies agree the Rural Telephone Companies withdraw

their objections in the above-captioned proceeding and agree the service area requirement should be redefined as necessary for purposes of Verizon Wireless' designation as an additional eligible telecommunications carrier ("ETC") from the "study area" to all wire centers or partial wire centers of the Rural Telephone Companies located within the geographic boundaries of Bismarck Metropolitan Statistical Area ("Bismarck MSA").

1. On October 15, 2003, Verizon Wireless filed with the Commission an Application for Designation as an Eligible Telecommunications Carrier and Petition for Redefinition of Service Areas of Rural Telephone Companies (the "Application"), pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12). Exhibit A to the Application identifies the particular areas for which designation is sought. Exhibit B to the Application is a map comparing Verizon Wireless' current authorized cellular coverage areas in Bismarck MSA with the wire center boundaries of each local exchange carrier.

2. Verizon Wireless currently serves areas in Bismarck MSA also served by Qwest and two rural telephone companies, namely, BEK Communications Cooperative ("BEK Communications") and West River Telecommunications Cooperative ("West River Telecom").

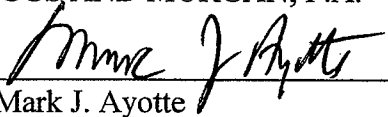
3. The respective study areas of BEK Communications and West River Telecom do not correspond with Verizon Wireless' CMRS licensed area or existing signal coverage area in Bismarck MSA. Therefore, the Commission should redefine the service area requirement for purposes of Verizon Wireless' ETC designation, pursuant to 47 C.F.R. § 54.207, to enable Verizon Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e).

4. Accordingly, Verizon Wireless and the Rural Telephone Companies stipulate and agree that the Rural Telephone Companies withdraw their opposition to the Application and agree that the Commission may issue an Order consistent with this Stipulation to redefine the service area requirement for purposes of designating Verizon Wireless as federal ETC as set forth on Exhibit A.

5. Nothing in this Stipulation shall be construed as an agreement to redefine the Rural Telephone Companies' study area for the purposes of their receipt of universal service support nor shall it be construed to constitute a waiver of the Rural Telephone Companies' rights to object to or contest any future ETC applications which may be filed with the Commission in other documents and this Stipulation shall be limited solely to the purposes of the above-captioned proceeding.

Dated: February 4, 2004

BRIGGS AND MORGAN, P.A.

By   
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Dated: February 4, 2004

## **EXHIBIT A**

### **I. Areas for Which Verizon Wireless Should Be Granted ETC Designation**

1. Qwest Corporation – Exchanges
  - Mandan
  - Bismarck

### **II. Areas for Which Verizon Wireless Should Be Granted Conditional ETC Designation Subject to Redefinition of the Service Area Requirement**

1. BEK Communications Cooperative – All wire centers or partial wire centers located within the geographic boundaries of Bismarck MSA
2. West River Telecommunications Cooperative – All wire centers or partial wire centers located within the geographic boundaries of Bismarck MSA



# OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF NORTH DAKOTA

1707 North 9th Street

Bismarck, North Dakota 58501-1882

Allen C. Hoberg  
DIRECTOR

February 6, 2004

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Mr. William W. Binek  
Hearing Administrator  
Public Service Commission  
600 E. Boulevard Avenue  
Bismarck, ND 58505

Re:

Northwest Dakota Cellular of North Dakota Limited Partnership  
North Central RSA 2 of North Dakota Limited Partnership  
North Dakota RSA No. 3 Limited Partnership  
Badlands Cellular of North Dakota Limited Partnership  
North Dakota 5 - Kidder Limited Partnership  
Bismarck MSA Limited Partnership  
Designated Eligible Carrier  
Applications  
OAH File No. 20040006

Case No. PU-1226-03-0597  
Case No. PU-386-03-598  
Case No. PU-897-03-599  
Case No. PU-1225-03-600  
Case No. PU-338-03-601  
Case No. PU-494-03-602

Dear Mr. Binek:

I am advised that the hearing for the captioned matters scheduled to be held February 10, 2004, will be conducted as an informal hearing, and that my presence is not required. Accordingly, I have noted our docket, and return to you the documents previously provided to me for the hearing. No additional documents for the hearing were filed with me.

Please do not hesitate to call me directly if you have any questions concerning our file or otherwise if I can be of further assistance to you for this matter.

We were pleased to assist the Public Service Commission for this matter.

Sincerely,

Al Wahl  
Administrative Law Judge

AW/ljc

Enc.

cc: Mr. Mark J. Ayotte  
Mr. Don Negaard

FEB 09 2004

RECEIVED